

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NEKIDA MONTGOMERY,
o/b/o Z.F.M.,

Plaintiff,

Case No. 14-14914

v.

Hon. John Corbett O'Meara

CAROLYN W. COLVIN,
ACTING COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

**OPINION AND ORDER GRANTING
PLAINTIFF'S MOTION FOR ATTORNEY'S FEES**

Before the court is Plaintiff's motion for an award of attorney's fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). Plaintiff seeks \$5,384.28 in attorney's fees and \$15.39 in costs, plus an additional \$440.33 in fees for the time spent preparing the reply brief to the fee motion. The requested fees represent 26.8 hours of attorney time (plus 2.5 hours for the reply) at \$176.13 per hour, and 8.3 hours of paralegal time at \$80 per hour. Defendant does not object to Plaintiff's request for costs, but argues that the time spent and the hourly rate are excessive.

With respect to the time spent, Defendant contends that Plaintiff has billed 3

hours of paralegal time for “clerical” tasks. Defendant also contends that the time spent preparing the fee motion (1.5 attorney hours and 2 paralegal hours) is excessive. Altogether, Defendant argues that the court should strike 5 hours of paralegal time and .45 hours of attorney time.

Having reviewed Plaintiff’s supporting documentation, the court finds the paralegal time to be sufficiently supported and the overall hours spent to be modest and reasonable, particularly in light of the court’s experience with similar cases and attorney fee awards in general. This includes the time requested for preparing the reply brief.

The court also finds Plaintiff’s requested hourly rate of \$176.13 to be well supported and reasonable. The EAJA provides that “attorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.” 28 U.S.C. § 2412(d)(2)(A). “In requesting an increase in the hourly-fee rate, Plaintiffs bear the burden of producing appropriate evidence to support the requested increase.” Bryant v. Commissioner of Social Security, 578 F.3d 443, 450 (6th Cir. 2009) (holding plaintiff must produce “satisfactory evidence – in addition to the attorney’s own affidavits – that the requested rates are in line with those prevailing

in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation”).

Here, Plaintiff has produced evidence that the cost of living (shown by the Consumer Price Index) has increased since the statutory EAJA fee was set at \$125 per hour in March 1996, almost twenty years ago. Applying this cost of living increase, Plaintiff calculated an hourly rate of \$176.13. Although this evidence, by itself, is not enough, Plaintiff has produced affidavits from two other social security law practitioners stating that they charge in excess of \$125 per hour and that “attorneys are generally not willing to accept representation of Social Security claimants in federal court at an hourly rate of \$125.” Plaintiff has also attached the most recent State Bar of Michigan economic survey, indicating that mean hourly rates for private practitioners for all firms in all locations is in excess of \$200 per hour. Plaintiff’s counsel, Howard D. Olinsky, has twenty-nine years of experience handling Social Security cases. The mean hourly rate for attorneys with twenty-nine years of experience is \$279.

The court finds that Plaintiff has sustained her burden of presenting evidence that the requested hourly rates are reasonable and in line with prevailing market rates. See Hayes v. Comm’r of Soc. Sec., 2014 WL 5427533 (E.D. Mich. Oct. 24, 2014) (awarding Plaintiff’s attorney \$173.01 per hour). Accordingly, the court

will grant Plaintiff's requested attorney's fees and costs in the amount of \$5,840.

IT IS HEREBY ORDERED that Plaintiff's motion for attorney's fees is GRANTED, consistent with this opinion and order.

s/John Corbett O'Meara
United States District Judge

Date: October 27, 2015

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, October 27, 2015, using the ECF system.

s/William Barkholz
Case Manager